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7 **UNITED STATES DISTRICT COURT**

8 **DISTRICT OF NEVADA RENO**

9 HAROLD DEAN LOGAN

10 Plaintiff(s),

11 v.

Case No.: 3:11-CV-00063-RCJ-RAM

**ORDER**

12 WORLD SAVINGS BANK, FSB; GOLDEN  
13 WEST SAVINGS ASSOCIATION SERVICE  
CO., a California Corporation; FIRST  
14 AMERICAN TITLE aka FIRST MERICAN  
15 TITLE INSURANCE COMPANY; TICOR  
TITLE – RENO aka TICOR TITLE OF  
16 NEVADA, INC.; NATIONAL DEFAULT  
SERVICING CORPORATION; LSI TITLE  
17 AGENCY, INC.; WACHOVIA MORTGAGE,  
18 FSB; STANLEY S. SILVA, individually; and  
DOES 1-25 CORPORATIONS; DOES and  
19 ROES 1-25 Individuals, [Partnerships, or anyone  
claiming any interest to the property described in  
20 the action.

21 Defendant(s).

22 **ORDER OF THE COURT**

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24 THIS MATTER having come on regularly for hearing on April 25, 2011 on Motion of  
25 LSI Title Agency, Inc. to Dismiss Plaintiff's Complaint for Failure to State a Claim (ECF No.  
26 10), there being good cause therefore, the Court finds as follows:  
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1 **FACTS AND PROCEDURAL HISTORY**

2 Plaintiff, Harold Dean Logan, purchased a property commonly known as 1928 Kirby  
3 Court, Sparks, NV 89434. This property was security for a loan in the principal amount of one  
4 hundred eighty two thousand dollars (\$182,000). A Deed of Trust evidencing this was recorded  
5 with the Washoe County Recorder's Office on July 3, 2007. The Deed of Trust provided for,  
6 among other things, non-judicial foreclosure of the property in the event of a default by Plaintiff.  
7 On or about November of 2009 Plaintiff ceased making his required payments pursuant to the  
8 Deed of Trust and the Promissory Note that it secured. The Deed of Trust names World Savings  
9 Bank, FSB as Lender and Beneficiary, and names Golden West Savings Association Service Co.  
10 as Trustee.

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12 Subsequently the Note and Deed of Trust were acquired by Wells Fargo Bank as  
13 successor in interest to World Savings Bank, FSB by merger.

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15 On February 18, 2010, Ticor Title – Reno caused to be recorded a Notice of Default and  
16 Election to Sell with regards to the Property, recorded with the Washoe County Recorder's  
17 Office as document no. 3850857. This document was recorded by Ticor Title, on behalf of LPS  
18 Title Company – NV, for National Default Servicing Corporation.

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20 On June 11, 2010, LPS Title Company – NV caused to be recorded a Substitution of  
21 Trustee, executed by the present beneficiary Wells Fargo Bank N.A., with the Washoe County  
22 Recorder's Office as document no. 3891161, naming National Default Servicing Corporation as  
23 the substituted trustee. Also on June 11, 2010, LSI Title Agency, Inc. caused to be recorded on  
24 behalf of National Default Servicing Corporation a Notice of Trustee's Sale with the Washoe  
25 County Recorder's Office as document no. 3891162.

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27 At the time of hearing it was unclear whether the Trustee's Sale had occurred. At the  
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1 time the hearing, it was admitted by counsel for the Plaintiff that Plaintiff had made no payments  
2 towards the Note and Deed of Trust for approximately 18 months, and that the property was a  
3 rental and not the residence of the Plaintiff.

#### 4 STANDARD OF REVIEW

5 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the  
6 claim showing that the pleader is entitled to relief” in order to “give the defendant fair notice of  
7 what the ... claim is and the grounds upon which it rests.” *Conley v. Gibson*, 355 U.S. 41, 47  
8 (1957). Federal Rule of Civil Procedure 12(b)(6) mandates that a court dismiss a cause of action  
9 that fails to state a claim upon which relief can be granted. A motion to dismiss under Rule  
10 12(b)(6) tests the complaint’s sufficiency. *See N. Star Int’l v. Ariz. Corp. Comm’n*, 720 F.2d 578,  
11 581 (9<sup>th</sup> Cir. 1983). When considering a motion to dismiss under Rule 12(b)(6) for failure to  
12 state a claim, dismissal is appropriate only when the complaint does not give the defendant fair  
13 notice of a legally cognizable claim and the grounds on which it rests. *See Bell Atl. Corp. v.*  
14 *Twombly*, 550 U.S. 544, 555 (2007). In considering whether the complaint is sufficient to state a  
15 claim, the court will take all material allegations as true and construe them in the light most  
16 favorable to the plaintiff. *See NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9<sup>th</sup> Cir. 1986). The  
17 court, however, is not required to accept as true allegations that are merely conclusory,  
18 unwarranted deductions of fact, or unreasonable inferences. *See Sprewell v. Golden State*  
19 *Warriors*, 266 F.3d 979, 988 (9<sup>th</sup> Cir. 2001). A formulaic recitation of a cause of action with  
20 conclusory allegations is not sufficient; a plaintiff must plead facts showing that a violation is  
21 plausible, not just possible. *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (citing *Twombly v.*  
22 *Bell Atl. Corp.*, 550 U.S. 554, 555 (2007)).

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27 “Generally, a district court may not consider any material beyond the pleadings in ruling  
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1 on a Rule 12(b)(6) motion. However, material which is properly submitted as part of the  
2 complaint may be considered.” *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d  
3 1542, 1555 n.19 (9th cir. 1990) (citation omitted). Similarly, “documents whose contents are  
4 alleged in a complaint and whose authenticity no party questions, but which are not physically  
5 attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss”  
6 without converting the motion to dismiss into a motion for summary judgment. *Branch v.*  
7 *Tunnell*, 14 F.3d 449, 454 (9<sup>th</sup> Cir. 1994). Moreover, under Federal Rule of Evidence 201, a  
8 court may take judicial notice of “matters of public record.” *Mack v. S. Bay Beer Distribs, Inc.*,  
9 798 f.2d 1279, 1282 (9<sup>th</sup> Cir. 1986). Otherwise, if the district court considers materials outside  
10 the pleadings, the motion to dismiss is converted into a motion for summary judgment. *See*  
11 *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9<sup>th</sup> cir. 2001).

#### 12 ANALYSIS

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15 Based on the Motion to Dismiss of LSI Title Agency, and for the reasons stated therein,  
16 Plaintiff’s First, Second, Third, Fourth, Sixth, Seventh, Eighth and Ninth causes of action are  
17 dismissed with prejudice without further discussion. Plaintiff’s Fifth cause of action, an  
18 allegation of a statutory defect in foreclosure, will be discussed further.

19  
20 Plaintiff’s allege a statutory defect in foreclosure under NRS § 107.080. This statute is in  
21 fact the source of the most common statutory defects in foreclosure in this state. To wit, the  
22 recording of a Notice of Default (“NOD”) by an entity that has not yet been named as trustee,  
23 and without any evidence of agency on behalf of the trustee or beneficiary of the underlying debt  
24 at the time of recordation. *See* NRS § 107.080(2)(c).

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26 In this case, the trustee was Golden West Savings Association. The NOD was recorded  
27 by Ticor Title – Reno, on behalf of LPS Title Company – NV, on behalf of National Default  
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1 Servicing Corporation. Without any evidence that Ticor, LPS, or NDSC was the trustee,  
2 beneficiary, or agent of one of those entities, there appears to be a potential statutory defect in  
3 foreclosure. Although such a defect alone will not support a claim for damages under a wrongful  
4 foreclosure theory in the face of an actual default, *see Collins v. Union Fed. Sav. & Loan Ass'n*,  
5 662 P.2d 610, 623 (Nev. 1983), it will support an injunction until the defect is disproved or  
6 remedied.

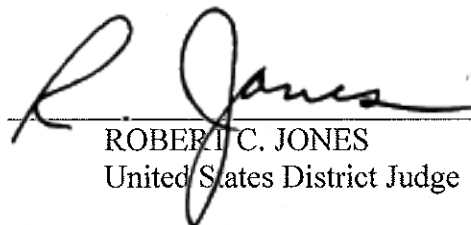
7  
8 However, a Substitution of Trustee was filed in this matter substituting NDSC for Golden  
9 West Savings Association. Although this Substitution of Trustee was filed after the recordation  
10 of the NOD, it does represent a clear and unambiguous representation that either NDSC was  
11 acting on behalf of a proper entity, either the trustee or beneficiary, or a subsequent ratification  
12 of the actions taken by NDSC by the beneficiary, who executed the Substitution of Trustee, with  
13 regards to the recording of the NOD. In either event, the subsequent recordation of a  
14 Substitution of Trustee naming NDSC as the new trustee corrects the defect in its recording,  
15 rendering the claim under NRS 107.080 moot.

#### 16 CONCLUSION

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18 IT IS HEREBY ORDERED that the Motion to Dismiss (ECF 10) of LSI Title Agency is  
19 GRANTED. All claims are dismissed as against that defendant.

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21 IT IS SO ORDERED

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23 Dated this 27th day of April, 2011.

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27 ROBERT C. JONES  
28 United States District Judge